

FME Corp  
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w/p TL

86-12

DEC 17 1986

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2 Assistant Regional Counsel  
3 United States Environmental Protection Agency  
4 215 Fremont Street  
5 San Francisco, California 94105

6 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

7 REGION 9

8 In the matter of: )

9 FMC CORPORATION )  
10 FRESNO, CALIFORNIA, )

11 RESPONDENT )

12 Proceeding Under Section 106(a) )  
13 of the Comprehensive Environmental )  
14 Response, Compensation, and )  
15 Liability Act of 1980 (42 U.S.C. )  
16 §9606(a)) as amended by the )  
17 Superfund Amendments and Reauthori- )  
18 zation Act of 1986 and Section 7003 )  
19 (a) of the Resource Conservation )  
20 and Recovery Act of 1976 (42 U.S.C.) )  
21 §6973(a)). )

Docket No. 86-12

22 ADMINISTRATIVE ORDER  
23 ON CONSENT

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I. AUTHORITY

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I. AUTHORITY

- A. This Consent Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9606(a), (as amended by the Superfund Amendments and Reauthorization Act of 1986) and delegated to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") on August 14, 1981, by Executive Order 12316, 46 Fed. Reg. 42237, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-14 and 14-14-A, the latter of which was signed on April 16, 1984. This authority has been redelegated to the Director, Toxics & Waste Management Division, EPA, Region 9. Other authority for this Order is that vested in the EPA Administrator in Section 7003 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6973).
- B. The Respondent consents to and does not contest EPA jurisdiction regarding this Consent Order.

II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and FMC Corporation are:

- A. To conduct the Remedial Investigation ("RI") described in the Remedial Investigation and Feasibility Study Work Plan ("RI/FS Work Plan"), a copy of which is attached as Attachment A and by this reference made a part of this Consent Order, in order to determine fully the nature and extent of contamination and

1 the potential, if any, for harm to the public health or wel-  
2 fare or the environment caused by the release or threatened  
3 release of hazardous substances, pollutants, or contaminants  
4 at or from the FMC Corporation, Fresno facility ("the Site"),  
5 as defined in paragraph III(A) below. The RI/FS Work Plan  
6 specifies work to be performed during the Remedial Investiga-  
7 tion, including sediment and water sampling, soil core boring  
8 and sampling, monitoring well placement, ground water sampling,  
9 pumping and aquifer tests. It also includes a list of reports,  
10 documents, and other deliverables that the FMC Corporation  
11 will provide for EPA review, comment and/or approval.

12 B. To conduct the Feasibility Study ("FS") described in the  
13 RI/FS Work Plan for evaluating remedial action alternatives  
14 to prevent and eliminate the release or threatened release of  
15 hazardous substances, pollutants, or contaminants at or from  
16 the Site.

17 C. To undertake all actions required by the terms and conditions  
18 of this Consent Order in a cost effective manner in accordance  
19 with the provisions of the National Contingency Plan, 40  
20 C.F.R. Part 300.61 et seq., as amended.

21 D. In entering into this Consent Order, FMC neither admits nor  
22 denies any factual findings, legal conclusions, or deter-  
23 minations made by EPA, nor does FMC waive any right it may  
24 have in any subsequent proceeding relevant to this matter  
25 except as expressly stated. EPA will not use the provisions  
26 of Articles II, III, IV, or V of this Consent Order against  
27 FMC in any subsequent proceeding unrelated to the enforcement  
28 of this Order or its provisions.

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III. BACKGROUND.....

A. The FMC Fresno facility is an active pesticide formulation plant where a wide variety of pesticides have been formulated since the 1940's. The plant is located at 2501 and 2405 South Sunland Avenue in the southern part of the City of Fresno. It is identified as Lot 2 and portions of Lots 1, 3, 4, 6, and 7 of Section 14, Township 14 South, Range 20 East of the Mount Diablo Base Meridian, Fresno County, California. The 17.92 acre site consists of a 4.92 acre vacant lot (2405 S. Sunland) and 13 acres where the FMC plant (2501 S. Sunland) is located. The site is situated in an industrial area with some nearby agricultural land and commercial establishments.

B. The 13 acre facility has been used by FMC as a pesticide and fertilizer formulation plant since its acquisition from Sunland Industries in 1959. Sunland operated a pesticide and fertilizer formulation plant at the site beginning in 1946. The California Department of Corporations verified that Sunland Industries, Inc. has not been incorporated in California in the past 10 years. The 4.92 acre vacant property is currently owned by FMC Corporation, but Southern Pacific Railroad Company owned it from 1964 to 1981. FMC Corporation is incorporated in the State of Delaware and headquartered in Chicago, Illinois.

C. On October 2, 1984, the Site was proposed for inclusion on the Environmental Protection Agency's National Priorities List (NPL) as defined in Section 105 of CERCLA (42 U.S.C. 9605). On June 10, 1986, EPA determined to continue it as a proposed site.

- 1 D. The facility was developed in 1931 as a sulfur grinding  
2 operation with fertilizers and dry pesticides formulation  
3 added about 1946. Liquid pesticides were added to the form-  
4 ulary about 1958 and over the years of its existence, the  
5 facility has formulated nearly all types of pesticides.
- 6 E. Included in the plant's past operations are several process  
7 and wastewater tanks, a drum washing facility, two ponds, an  
8 evaporation pad, and other related devices. During the  
9 1960's and perhaps early 1970's, contaminated rinsate  
10 (containing mineral oil, dirt, and surfactants) from the drum  
11 rinsing operation, stormwater runoff from the facility,  
12 equipment washdown water, and spill cleanup water were  
13 discharged to the 4.92 acre site located in the northernmost  
14 area of the facility. A 0.6 acre pond was located in the  
15 southeastern portion of this acreage and is the most likely  
16 locus of the earlier aqueous disposal from the FMC facility  
17 to the 4.92 acre site.
- 18 F. From 1963 to 1964, rinsate from the drum rinsing operation was  
19 sprayed onto a cement evaporation pad located in the drum  
20 washing area.
- 21 G. During the early 1970's, a bentonite-lined pond was constructed  
22 immediately south of the 4.92 acre site to collect, store, and  
23 evaporate waste waters. This pond initially received the drum  
24 rinsate that had formerly been sprayed on the evaporation pad  
25 and runoff from the spill-prone areas of the facility. Later,  
26 equipment washdown and spill cleanup water from the liquid  
27 formulation facility were also transferred to this pond.

28 / /

- 1 H. An existing percolation pond located adjacent to the waste  
2 pond was expanded during the period 1976-1979 & is still  
3 used to receive stormwater runoff.
- 4 I. Investigations conducted by FMC and regulatory agencies have  
5 discovered pesticide residues including DDT, DDD, DDE, endo-  
6 sulfan I/II, toxaphene, dibrom, phorate, diazinon, disyston,  
7 cythion, DEF, Ethion, carbophenothion, Gamma-BHC, dieldrin,  
8 and DNBP in the soil and groundwater at the site.
- 9
- 10 J. Depth to ground water is 60 to 80 feet. The City of Fresno  
11 has two (2) municipal drinking supply wells as close as 1,500  
12 feet from the site. These wells contribute to a distribution  
13 system which serves approximately 250,000 people.

14 IV. CONCLUSIONS OF LAW

- 15 A. The Site is a "facility" as defined in Section 101 (9) of  
16 CERCLA, 42 U.S.C. §9601 (9).
- 17 B. FMC is a "person" as defined in Section 101 (21) of  
18 CERCLA, 42 U.S.C. §9601 (21).
- 19 C. Some of the chemicals and their constituents at the  
20 Site are "hazardous substances" as defined in Section 101  
21 (14) of CERCLA, 42 U.S.C. §9601(14).
- 22 D. The past, present, and potential migration of hazardous  
23 substances from the Site, if any, constitutes an actual or  
24 threatened "release" as defined in Section 101(22) of CERCLA,  
25 42 U.S.C. §9601(22).
- 26 E. FMC is a potentially responsible party pursuant to Section  
27 107(a) of CERCLA, 42 U.S.C. §9607(a).

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V. DETERMINATIONS

Based on the facts presented in Background and the Conclusions of Law set out above, EPA has determined that:

- A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.
- B. The actions required by this Consent Order are necessary to protect the public health, welfare and the environment.

VI. WORK TO BE PERFORMED

All response work performed pursuant to this Consent Order shall be under the direction and supervision of a qualified professional engineer or a certified geologist with expertise in hazardous waste site investigation. Prior to initiation of site work, FMC shall notify EPA in writing of the name, title, and qualifications of such engineer or geologist and of any contractors and/or subcontractors to be used in carrying out the terms of this Consent Order.

It is hereby AGREED TO AND ORDERED that the following work shall be performed by FMC:

- A. FMC shall perform the tasks and submit reports contained in the RI/FS Work Plan (Attachment 1). EPA will perform the Endangerment Assessment (EA) portion of the FS pursuant to EPA Guidance. EPA will coordinate with FMC to integrate the EA into the FS. Deliverables to be submitted by FMC are listed below. This listing includes the type of review that EPA will conduct (either "Review and Comment" or "Review and Approve"). Each deliverable should include the items listed with it, as well as items described in the

1 RI/FS Work Plan. These specifics are meant as a framework  
2 for each deliverable's content. Open discussions between  
3 FMC and EPA will be necessary to assure that deliverables  
4 contain sufficient detail. Any reports, plans, specific-  
5 ations, schedules, and attachments required by this Consent  
6 Order are, upon approval by EPA, incorporated into this  
7 Consent Order. Any non-compliance with such EPA approved  
8 reports, plans, specifications, schedules, and attachments  
9 shall be considered a failure to achieve the requirements  
10 of this Consent Order and will subject FMC to the provisions  
11 included in the "Stipulated Penalties" Section (Section  
12 XIII) of this Consent Order.

13 1. Deliverables

14 a) Monthly Status Reports - REVIEW AND COMMENT

- 15 \* A description of progress made during the  
16 reporting period.
- 17 \* A summary of items submitted to EPA under the  
18 Consent Order during the reporting period.
- 19 \* A list of samples submitted to chemical  
20 laboratories, including those for which analyses  
21 have been returned, and those for which analyses  
22 have not been returned during the reporting  
23 period.
- 24 \* Results of all sampling and/or tests or other  
25 technical data generated by FMC or on FMC's  
26 behalf during the previous month.
- 27 \* Schedule for sampling for following month.
- 28 / /

1           b) Quarterly Ground Water Monitoring

2           Reports - REVIEW AND COMMENT

3           \* Analytical data summary and analysis.

4           \* Regional maps of well locations and:

5           - Water surface elevations and contours.

6           - Contaminant concentration levels and  
7           contours, if any.

8           - Estimates of ground water flow rate,  
9           and direction.

10          - Magnitude of hydraulic gradient.

11          \* Summary of past quarter's monthly reports.

12          \* Laboratory reports.

13          \* QA/QC documentation.

14       c) Phase I Ground-Water Report - REVIEW AND APPROVE

15       \* Well installation details:

16       - Summary of investigative activities.

17       - Site plan maps indicating well locations.

18       - Analytical data summary and short discussion.

19       - Laboratory reports.

20       - Pumping test results.

21       - Drilling logs, well development logs, depths  
22       of completion and screened intervals.

23       - QA/QC documentation.

24       \* Phase I Ground Water Report details:

25       - Analytical data summary and short discussion.

26       - Laboratory reports.

27       - QA/QC documentation.

28       - Pump test analyses.

- Geologic cross sections.
- Site plan maps indicating well locations, water surface elevation contours and contours of contaminants, if any.
- Recommendations of necessary Phase II work.

d) Phase I Soil Report - REVIEW AND APPROVE

- \* Summary of soil investigation activities.
- \* Analytical data summary and analysis.
- \* Laboratory reports.
- \* Site plan map with appropriate presentation of analytical results.
- \* Schematic subsurface geologic cross sections with appropriate presentation of analytical results.
- \* Discussion section on relationship of physical testing results to the analytical results.
- \* Soil boring logs.
- \* QA/QC Documentation
- \* Recommendations of necessary Phase II work.

e) Phase I Surface Water and Sediment

Report - REVIEW AND APPROVE

- \* Summary of investigative activities.
- \* Site plan map indicating sampling locations and appropriate presentation of analytical results.
- \* Analytical data summary.
- \* Laboratory reports.
- \* QA/QC Documentation
- \* Recommendations of necessary Phase II work.

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1 f) Phase I Air Report - REVIEW AND APPROVE

2 \* Summary of investigative activities.

3 \* Site plan map indicating sampling locations and  
4 contaminant level contours.

5 \* Analytical data summary, including laboratory  
6 reports and data validation section.

7 \* Recommendation of necessary Phase II work.

8 g) Phase II Sampling Plan - REVIEW AND APPROVE

9 h) Remedial Investigation Report  
(Draft)-REVIEW AND COMMENT  
(Final)-REVIEW AND APPROVE

10 i) Identification and Screening of  
11 Remedial Technologies Report  
(Draft)-REVIEW AND COMMENT  
(Final)-REVIEW AND APPROVE

12 j) Remedial Alternative  
13 Screening Report  
(Draft)-REVIEW AND COMMENT  
(Final)-REVIEW AND APPROVE

14 k) Feasibility Study Report (Draft)-REVIEW AND COMMENT  
15 (Final)-REVIEW AND APPROVE  
16

17 This work shall be consistent with all applicable requirements  
18 of the National Contingency Plan and shall be conducted in  
19 accordance with EPA RI/FS guidances ("Guidance on Remedial  
20 Investigations Under CERCLA," June, 1985; and "Guidance on  
21 Feasibility Studies and Under CERCLA," June, 1985) and with  
22 the standards, specifications, and schedule contained in the  
23 approved RI/FS Work Plan. The RI/FS Work Plan is not subject  
24 to Dispute Resolution (Article XII) procedures.

25 B. EPA shall, if appropriate, review, comment, and approve or  
26 disapprove each report, document or other deliverable. Within  
27 the time period scheduled for review of FMC's submittals, EPA  
28 shall notify FMC in writing of EPA's approval, disapproval or

1 if additional review time is required. In the event of any  
2 disapproval EPA shall specify the reasons for such disapproval  
3 and recommended modifications regarding the disapproval.

4 1. Within 30 days, or more if needed, of receipt of FMC's  
5 submittals pursuant to paragraphs (c),(d),(e),(f), and (g) EPA  
6 shall submit to FMC its comments. FMC shall submit its final  
7 deliverable incorporating EPA's comments within 30 days of  
8 receiving EPA's comments.

9 2. Within 45 days, or more if needed, of receipt of  
10 FMC's submittals pursuant to paragraphs (h),(i),(j), and (k),  
11 EPA shall submit to FMC its comments. FMC shall submit its  
12 final deliverables incorporating EPA's comments within 30  
13 days of receiving EPA's comments.

14 3. FMC may begin dispute resolution procedures, if  
15 appropriate, after it receives EPA's approval or disapproval  
16 of the amended deliverable.

17 4. FMC's deadlines will be extended for an amount equal  
18 to any extra time needed by EPA beyond the time specified above  
19 to review and comment on the above deliverables.

20 C. EPA may determine that additional tasks, including remedial in-  
21 vestigatory work, engineering evaluation, and interim response  
22 measures are necessary as part of the RI/FS. Such determina-  
23 tions shall be cost effective, consistent with the NCP, and  
24 shall be subject to the cost reimbursement provisions of the  
25 Superfund Amendment and Reauthorization Act of 1986. FMC  
26 shall implement any additional tasks which EPA determines are  
27 necessary as part of the RI/FS or for the Public Health and  
28 Environmental Assessment. The additional work shall be

1 completed in accordance with the standards, specifications,  
2 requirements, and schedule determined or approved by EPA.

3 D. Documents, including progress and technical reports, approvals,  
4 disapprovals, and other correspondence to be submitted pursuant  
5 to this Consent Order, shall be sent via overnight mail to the  
6 following addressees or to such other addresses as the parties  
7 hereafter may designate in writing, and shall be deemed  
8 submitted on the date received by EPA or FMC.

9 1) Documents to be submitted to EPA (other than those  
10 required by paragraph VI.C.) shall be sent to:

11 Marvin Young (T-4-4)  
12 Toxics & Waste Management Division  
13 US EPA, Region 9  
215 Fremont Street  
San Francisco, CA 94105

14 Phone Number: (415) 974-8444

15 Copies shall be sent to:

16 Barney Popkin  
17 Woodward-Clyde Consultants  
One Walnut Creek Center  
100 Pringle Avenue  
18 Walnut Creek, CA 94596

19 Tim Souther  
20 California Regional Water Quality Control Board  
Central Valley Region, Fresno Office  
3614 East Ashlan Avenue  
21 Fresno, CA 93726

22 Tony Landis  
23 California Department of Health Services  
Northern California Section  
4250 Power Inn Road  
24 Sacramento, CA 95026

25 Kevin Shaddy  
26 California Department of Health Services  
Northern California Section,  
5545 East Shields Avenue  
27 Fresno, CA 93727  
28

1 Rick Leibold  
2 Environmental Health Services  
3 Fresno County Department of Health  
4 P.O. Box 11867  
5 Fresno, CA 93775

6 Wayne Berman, Ph.D.  
7 ICF Clement  
8 707 Wilshire Boulevard, Suite 3615  
9 Los Angeles, CA 90017

10 2) Documents to be submitted to FMC shall be sent to:

11 David A. Lewis  
12 Plant Engineer  
13 FMC Corporation  
14 P.O. Box 1669  
15 Fresno, CA 93717  
16 Phone Number: (209) 264-7144

17 Alfred C. Little  
18 Environmental Engineer  
19 FMC Corporation  
20 2000 Market Street  
21 Philadelphia, PA 19103

22 VII. DESIGNATED PROJECT COORDINATORS

- 23 A. On or before the effective date of this Consent Order, EPA  
24 shall designate a Project Coordinator who shall have the  
25 authorities, duties, and responsibilities vested in the  
26 Remedial Project Manager by the National Contingency Plan.  
27 FMC shall also designate a Project Coordinator. Both  
28 Project Coordinators shall be responsible for overseeing the  
implementation of this Consent Order. The EPA Project Coordinator will be EPA's designated representative at the Site. To the maximum extent possible, all oral communications between FMC and EPA concerning the activities performed pursuant to this Order shall be directed through the Project Coordinators. All documents, including progress and technical reports, approvals, and other correspondence concerning the



1 activities performed pursuant to the terms and conditions of  
2 this Consent Order, shall be delivered in accordance with  
3 paragraph VI(D) above.

4 B. EPA and FMC each have the right to change their respective  
5 Project Coordinators. Such a change shall be accomplished  
6 by notifying the other party in writing at least one week  
7 prior to the change.

8 C. Consistent with the provisions of this Consent Order, the EPA  
9 Project Coordinator shall also have the authority vested in  
10 the On-Scene-Coordinator ("OSC") by the National Contingency  
11 Plan, unless EPA designates a separate individual as OSC, who  
12 shall then have such authority.

13 D. The absence of the EPA Project Coordinator or OSC from the  
14 Site shall not be cause for the stoppage of work.

#### 15 VIII. QUALITY ASSURANCE

16 FMC shall use quality assurance, quality control, and chain  
17 of custody procedures in accordance with the QAF? Plan approved  
18 by EPA as part of the RI/FS Work Plan.

#### 19 IX. SITE ACCESS

20 To the extent that FMC requires access to land other than  
21 land it owns, FMC will use its best efforts to obtain access  
22 agreements for itself, its contractors and agents, EPA, and its  
23 contractors and agents, from the present owners or lessees as the  
24 need for such access may arise. In the event that FMC is not able  
25 to obtain site access to property owned or controlled by persons  
26 or entities other than FMC, FMC shall notify EPA promptly regarding  
27 both the lack of, and efforts to obtain, such access.  
28

X. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

- A. FMC shall provide EPA with the results and QA/QC documentation of all sampling and/or tests or other technical data generated by FMC or on FMC behalf with regard to soil, ground water, surface water, or air contamination by hazardous substances, pollutants, or contamination at the Site. Details and documentation of all sampling and analysis data collection completed during the previous month shall be presented in a monthly report.
- B. At the request of EPA, FMC shall provide split or duplicate samples to EPA and/or its authorized representatives of any samples collected by FMC as part of the RI/FS Work Plan. FMC shall notify EPA of any planned sample collection activity in the preceding monthly report.
- C. FMC shall permit EPA, and its authorized representative to have reasonable access at all times to the Site to monitor any activity conducted pursuant to the RI/FS Work Plan or conduct such tests or investigations as EPA deems necessary.
- D. FMC shall permit EPA and/or its authorized representative to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, that in any way concern soil, ground water, surface water or air contamination at the site.
- E. FMC may assert a confidentiality claim, covering part or all of the information requested by this Consent Order pursuant to 40 C.F.R. §2.203(b). Analytical data shall not be claimed as confidential by FMC. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part

2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to FMC.

#### XI. RECORD PRESERVATION

EPA and FMC agree that each shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after termination of this Consent Order, separate central depositories of the records and documents required to be prepared under the RI/FS Work Plan. If EPA requests that some or all such documents be preserved for a longer period of time, FMC shall either comply with that request or permit EPA to obtain or copy any such document prior to its destruction.

#### XII. DISPUTE RESOLUTION

If FMC objects to any EPA decision, pursuant to Article VI(B) or (C), FMC shall notify EPA in writing of its objections within fourteen (14) calendar days of receipt of the decision. EPA and FMC then have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection to reach agreement. At the end of the fourteen (14) day discussion period, EPA shall provide a written statement of its decision to FMC. That statement is deemed to be a final Agency action. Any judicial review of an EPA decision shall be sought by the parties only in the United States District Court for the Eastern District of California. Use of the dispute resolution provision will not relieve FMC's duty to complete the other tasks in a timely manner in accordance with the schedule.

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XIII. STIPULATED PENALTIES

A. Except with respect to any extensions allowed by EPA in writing, or excused by the provisions of Article X.V (Force Majeure), for each day in which FMC fails to submit a report or document, or in which FMC otherwise fails to achieve the requirements of this Order, FMC agrees to pay the sum set forth below as stipulated penalties. These penalties shall accrue commencing upon FMC's receipt of the written determination of disapproval, as specified in Article VI, or upon the failure of FMC to meet the schedule specified or modified by EPA in the RI/FS Work Plan (Attachment 1), or upon written notice from EPA to FMC that a violation of this Order has occurred. These penalties are not subject to Dispute Resolution (Article XII). Dispute Resolution shall not stay the accrual of these stipulated penalties.

B. Stipulated penalties shall accrue in accordance with paragraph XIII(A) above in the amount of \$10,000.00 per day for the first week of violation, \$15,000 per day for the second week of violation, and \$20,000 per day for the third and following weeks of violation.

C. FMC payment of stipulated penalties will be payable upon demand by the Director, Toxics and Waste Management Division, U.S. EPA, Region 9, by check made payable to the United States Treasury addressed to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
Pittsburgh, PA 15251

1 FMC shall send a notification of any penalty paid to the  
2 EPA Project Coordinator.

3 XIV. FORCE MAJEURE

4 FMC shall perform all the requirements of this Consent  
5 Order according to the time limits set out in the RI/FS Work Plan  
6 unless their performance is prevented or delayed by events which  
7 constitute a force majeure.

8 For the purposes of this Order, a force majeure is defined as  
9 any event arising from causes entirely beyond the control of FMC.  
10 Conflicting requirements of government agencies shall be deemed  
11 events of force majeure if timely resolution does not occur.  
12 Economic hardship shall not be considered an event beyond the  
13 control of FMC and shall not trigger the force majeure clause.

14 In the event of a force majeure, the time for performance of  
15 the activity delayed by the force majeure shall be extended for  
16 the time period of the delay attributable to the force majeure.  
17 The time for performance of any activity dependent on the delayed  
18 activity shall be similarly extended, except to the extent that  
19 the dependent activity can be implemented in a shorter time.  
20 EPA shall determine whether subsequent requirements are to be  
21 delayed and the time period granted for any delay. FMC shall  
22 adopt all reasonable measures to avoid or minimize any delay  
23 caused by a force majeure.

24 In the event of a force majeure, FMC shall immediately  
25 notify EPA's project coordinator orally and shall within fourteen  
26 (14) days of the oral notification, notify EPA in writing of the  
27 anticipated length and cause of the delay. The notification  
28

1 shall also state the measures taken and/or to be taken to prevent  
2 or minimize the delay, and the time table by which FMC intends  
3 to implement the delayed activity. Failure of FMC to comply  
4 with the force majeure notice requirements will be deemed an  
5 automatic forfeiture of its right to request a delay.

6  
7 **XV. RESERVATION OF RIGHTS**

8 Notwithstanding compliance with the terms of this Consent  
9 Order, including the completion of an EPA approved Remedial  
10 Investigation and Feasibility Study, FMC is not released from  
11 liability, if any, for any actions beyond the terms of this  
12 Consent Order taken by EPA respecting the Site. EPA reserves the  
13 right to take any enforcement action pursuant to CERCLA and/or  
14 any other legal authority, including the right to seek injunctive  
15 relief, monetary penalties, and punitive damages for any violation  
16 of law or this Consent Order.

17 EPA expressly reserves all rights and defenses that they  
18 may have, including EPA's right both to disapprove or work per-  
19 formed by FMC and to request that FMC perform tasks in addition  
20 to those detailed in the RI/FS Work Plan, as provided in this  
21 Consent order. EPA reserves the right to undertake removal  
22 actions and/or remedial actions at any time. EPA reserves the  
23 right to seek reimbursement from FMC for such costs incurred  
24 by the United States.

25 **XVI. REIMBURSEMENT OF COSTS**

26 Within 60 days of the effective date of this Consent Order,  
27 EPA will submit to FMC an accounting of all response and over-  
28

1 sight costs incurred by EPA associated with this site to the  
2 effective date of the Consent Order. In addition, at the end of  
3 each year, EPA shall submit to FMC an accounting of all response  
4 and oversight costs incurred by the U.S. Government with respect  
5 to this Consent Order. FMC shall, within 30 calendar days of  
6 receipt of each accounting, remit a check for the amount of those  
7 costs made payable to the Hazardous Substance Response Trust  
8 Fund. Checks should specifically reference the identity of the  
9 site and be addressed to:

10 U.S. Environmental Protection Agency  
11 Superfund Accounting  
12 P.O. Box 371003M  
Pittsburgh, PA 15251  
Attention: Collection Officer for Superfund

13 A copy of the transmittal letter shall be sent to the EPA Project  
14 Coordinator.

15 EPA reserves the right to bring an action against FMC  
16 pursuant to Section 107 of CERCLA, 42 U.S.C. §9607, for recovery  
17 of all response and oversight costs incurred by the United States  
18 related to this Consent Order and not reimbursed by FMC, as  
19 well as any other unreimbursed past and future costs incurred  
20 by the United States in connection with response activities  
21 conducted pursuant to CERCLA at this site. FMC reserves its  
22 rights pursuant to §106 of SARA to seek reimbursement of amounts  
23 paid to EPA which it believes are inconsistent with the NCP.

24 XVII. OTHER CLAIMS

25 Nothing in this Consent Order shall constitute or be construed  
26 as a release from any claim, cause of action or demand in law or  
27 equity against any person, firm, partnership, or corporation not  
28 a signatory to the Consent Order for any liability it may have

1 arising out of or relating in any way to the generation, storage,  
2 treatment, handling, transportation, release, or disposal of any  
3 hazardous substances, hazardous wastes, pollutants, or contaminants  
4 found at, taken to, or taken from the Site.

5  
6 XVIII. OTHER APPLICABLE LAWS

7 All actions required to be taken pursuant to this Consent  
8 Order shall be undertaken in accordance with the requirements of  
9 all applicable local, state, and federal laws and regulations  
10 unless an exemption from such requirements is specifically provided  
11 in this Consent Order.

12 XIX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

13 FMC agrees to indemnify and hold the United States  
14 Government, its agencies, departments, agents, contractors, and  
15 employees, harmless from any and all claims or causes of action  
16 arising from or on account of acts or omissions of FMC, its  
17 officers, employees, receivers, trustees, agents, or assigns, in  
18 carrying out the activities pursuant to this Consent Order. EPA  
19 is not a party in any contract involving FMC at the Site.

20 XX. COMMUNITY RELATIONS / PUBLIC COMMENT

21 EPA will implement a Community Relations Program in accordance  
22 with Agency policies and guidance documents. FMC may participate  
23 in the community relations activities when deemed appropriate by  
24 EPA.

25 XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

26 In consideration of the communications between FMC and  
27 EPA prior to the issuance of this Consent Order concerning its  
28 terms, FMC agrees that there is no need for a settlement



1 conference prior to the effective date of this Consent Order.  
2 Therefore, the effective date of this Consent Order shall be the  
3 date on which it is signed by EPA.

4 No informal advice, guidance, suggestions, or comments by  
5 EPA regarding reports, plans, specification, schedules, and any  
6 other writing submitted by FMC will be construed as relieving  
7 FMC of its obligation to obtain such formal approval as may  
8 be required by this Consent Order.

9 The attached Work plan will be subject to public comment  
10 following the signing of the Order. EPA may make changes to the  
11 Work plan based on the public comment. If FMC does not agree to  
12 incorporate those changes in the Workplan, EPA reserves the right  
13 to withdraw its consent and take any action it deems proper,  
14 including conducting the RI/FS itself.

15 XXII. PARTIES BOUND

16 This Consent Order shall apply to and be binding upon FMC  
17 and EPA, their agents, successors, and assignees.

18 No change in ownership or corporate or partnership status  
19 relating to the Site will in any way alter the status of FMC  
20 or in any way alter FMC's responsibility under this Consent  
21 Order. FMC will be responsible, and will remain responsible  
22 for carrying out all activities required of them under this  
23 Consent Order.

24 FMC shall provide a copy of this Consent Order to  
25 all contractors, sub-contractors, laboratories, and consultants  
26 retained to conduct any portion of the work performed pursuant to  
27 this Consent Order within 14 calendar days of the effective date  
28

of this Consent Order or date of such retention.

XXIII. NOTICE TO THE STATE

EPA has notified the State of California pursuant to the requirements of Section 106(a) of CERCLA.

XXIV. TERMINATION AND SATISFACTION

The provisions of the Consent Order shall be deemed satisfied upon FMC's receipt of written notice from EPA that FMC has demonstrated, to the satisfaction of EPA, that all of the terms of this Consent Order, including any additional tasks which EPA has determined to be necessary, have been completed.

IT IS SO AGREED AND ORDERED:

FMC Corporation

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

By

Robert J. Jaros  
Robert J. Jaros  
Director, Manufacturing

By

Jeff Zelikson  
Jeff Zelikson  
Director, Toxics & Waste Division  
United States Environmental  
Protection Agency, Region IX

Name:

FMC Corporation

12-20-86

Robert F. Smith  
Attorney for FMC

Jon K. Wactor  
Jon K. Wactor  
Assistant Regional Counsel  
United States Environmental  
Protection Agency, Region IX